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C.D., Appellant)	
)	
and)	Docket No. 17-0322
)	Issued: July 13, 2017
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS HEALTH CARE SYSTEM,)	
West Haven, CT, Employer)	
)	

Office of Solicitor, for the Director

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the prior decision are incorporated herein by reference. The relevant facts are set forth below.

On December 13, 2012 appellant, then a 53-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on November 13, 2012 she experienced fear, anxiety, and shock when her supervisor informed her that she was no longer covered by workers' compensation for a prior claim. She stopped work on November 13, 2012. The employing establishment controverted the claim, indicating that it had instructed appellant to properly request leave.

Appellant had a prior claim accepted by OWCP for post-traumatic stress disorder (PTSD) under file number xxxxxx838. Under that file number, she returned to modified part-time work on May 27, 2009, but continued to receive compensation for intermittent disability.³

The employing establishment, in a December 18, 2012 statement, related that appellant experienced a "crisis event" on November 13, 2012 after a discussion about leave. Appellant had resumed work on that date after an absence from August to November 2012 assisting her father-in-law. The employing establishment enclosed e-mail messages between appellant and management. In a November 3, 2012 e-mail, D.V., appellant's supervisor, informed her that she was scheduled to work 24 hours per week and that she should submit requests for leave without pay (LWOP) to human resources. D.V. noted that up to 30 hours of LWOP could be granted per year. Appellant, in a November 4, 2012 e-mail, requested annual leave and sick leave for her 24 hours of work time. She indicated that she took LWOP for the remaining work hours and received compensation from OWCP. In response, A.B., an injury specialist, informed appellant that she needed to complete claims for compensation (Forms CA-7) to obtain compensation from OWCP. She advised, "It is not an automatic payment. You will also need to provide medical [evidence] to justify your absence(s)."⁴ In a November 13, 2012 e-mail, appellant notified D.V. that she felt like she did in 2004 when a patient wanted to kill her and no one could tell her what to do.⁵ She advised that she had called for medical assistance, but everyone was at lunch. Appellant related that she was scared, confused, and embarrassed and requested clear communication.

² Docket No. 14-0168 (issued April 22, 2014).

³ On January 23, 2013, OWCP informed appellant that it had found that her December 13, 2012 notice recurrence of disability under file number xxxxxx838 was a new injury claim and would be adjudicated under the current file number xxxxxx689. File number xxxxxx838 is not before the Board on the present appeal.

⁴ In an e-mail dated September 27, 2012, appellant requested that D.V. help her complete a form under the Family and Medical Leave Act (FMLA). In response, a manager told her that a father-in-law was not covered under FMLA, but that she could use leave, including up to 30 days of leave without pay without approval or more with approval. In an October 2, 2012 e-mail, appellant informed D.V. that she was confused about how to take leave and requested assistance. In response T.R., a human resource specialist, told her to request annual leave, sick leave or LWOP from her supervisor. In an e-mail to D.V. dated October 8, 2012, appellant questioned why she was listed absent without leave as she was not near her allotment for taking leave. D.V. told her to request leave and that it would be "straightened out."

⁵ Appellant also sent the e-mail to other managers.

In a report of contact dated November 13, 2012, D.V. related that she returned a telephone call from appellant on that date around 11:30 a.m. Appellant asked her why she had to request LWOP as she received compensation from OWCP. D.V. “suggested she reread the information sent on time and leave and offered to reforward the information.” Appellant telephoned her at 11:55 a.m. and told her that she had too much to do, including “e-mail, notes to cosign, training to complete since she had been out for so long.” D.V. responded that she should take two days and catch up. At 1:05 p.m., appellant e-mailed that she did not understand what needed to be done and that she was in crisis with PTSD. D.V. telephoned appellant who related that “she was distraught, no one was helping her, she could not do the request for leave or enter her time[;] it was too much coming back after being gone since August.” They discussed the process for obtaining LWOP and D.V. told her she could use sick or annual leave in the meantime. After she received an e-mail from appellant indicating that she did not feel safe, D.V. telephoned her and on speakerphone requested that a coworker take her to the emergency room.⁶

In an undated statement received on January 23, 2013, appellant related that she had returned to limited-duty employment in 2009 following a work injury. She increased her work time to 24 to 28 hours per week using both flextime and flexplace. Appellant had difficulty “learning new skills or multitasking.” She had requested annual or sick leave or LWOP on November 13, 2012, but D.V. informed her that she could not use LWOP, but had to use sick or annual leave. D.V. did not provide her with requested assistance. Appellant did not understand why she had to enter her time as 40 hours per week when she was working a 24-hour a week schedule. She felt unsafe because no one assisted her when she was crying.

By decision dated January 29, 2013, OWCP denied appellant’s claim, finding that she had not established an injury in the performance of duty. It further determined that she had not established any compensable work factors.

On February 14, 2013 appellant requested an oral hearing before an OWCP hearing representative. In an accompanying statement, she asserted that on November 13, 2012 D.V. told her that she was not approved to request LWOP, that she must work full time, and that she was not approved for the 16 hours of LWOP that she had been getting from OWCP since 2009 when she returned to work. Appellant related that she completed CA-7 forms from June 2009 through October 2012 requesting LWOP that OWCP approved. A.B. informed her that any requests for LWOP over 30 days in a year required the approval of higher level management. Appellant maintained that D.V. told her that she no longer had coverage under OWCP and that she had to work full time or request sick and annual leave. A.B. instructed her to complete a Form CA-7, but she knew that she could only complete a Form CA-7 if she used LWOP. Appellant related that she had told the employing establishment to request any necessary information directly from her physician.

⁶ The record indicates that appellant received treatment at the emergency room on November 13, 2012.

At the telephone hearing, held on May 20, 2013, appellant again related that she did not know why the employing establishment did not allow her to use LWOP and told her that she was no longer entitled to OWCP benefits on November 13, 2012.⁷ She knew that she had to enter LWOP to submit a Form CA-7 to OWCP. Appellant related that OWCP accepted that she sustained PTSD in 2004 and paid her compensation for 24 hours per week. She had numerous e-mails about taking LWOP when she returned to work on November 13, 2012 after being off work on family leave. D.V. told her that she could no longer approve her leave requests without consent from an unidentified person. Appellant asked for “specific concrete guidelines on who it goes to and what time it comes from” and then broke down crying. The employing establishment subsequently approved her request for LWOP.

In a November 13, 2012 e-mail, which OWCP received on June 25, 2013, appellant informed A.B. and D.V. that she had returned to work, but was confused about matters regarding pay and time and asked whether her OWCP status had changed. In another November 13, 2012 e-mail, she informed D.V. that she had “absolutely no understanding of what needs to be done” and was in crisis with PTSD.

On June 11, 2013 the employing establishment related that on May 27, 2009 appellant returned to modified full-time work after a work injury. She intermittently requested LWOP using CA-7 forms. Appellant was off work from August 13 through November 13, 2012 caring for her father-in-law. She took her work laptop, but did not enter leave. On November 13, 2012 appellant’s supervisor advised her of leave procedures.

By decision dated July 15, 2013, OWCP’s hearing representative affirmed the January 29, 2013 decision. He found that appellant had not established any compensable work factors.

Appellant, on October 30, 2013, appealed the July 15, 2013 decision to the Board.⁸ In an April 22, 2014 decision, the Board affirmed the July 15, 2013 decision. It found that appellant had not established error or abuse by the employing establishment in matters involving leave.⁹

On March 14, 2015 appellant requested reconsideration. She related that she returned to work on November 13, 2012 after an absence of 11 weeks. Appellant knew that she had a lot to do and wanted her laptop returned so she could work from home. Her laptop was not ready.

⁷ By letter dated March 13, 2013, issued under file number xxxxxx838, OWCP informed appellant’s Senator that it had paid her compensation for intermittent LWOP since her return to part-time modified employment on May 27, 2009. It also paid her compensation for intermittent LWOP from November 5, 2012 through January 3, 2013 based on CA-7 forms filed March 7, 2013.

⁸ In a decision dated November 12, 2013, OWCP denied appellant’s October 31, 2013 request for reconsideration of the July 15, 2013 decision as she did not raise an argument or submit evidence sufficient to warrant reopening her case for further merit review under 5 U.S.C. § 8128(a). The Board and OWCP, however, may not have concurrent jurisdiction over the same issue in a case. Consequently, any decision by OWCP on an issue pending before the Board is null and void. *See Douglas E. Billings*, 41 ECAB 880, 895 (1990). As OWCP issued the November 12, 2013 decision after appellant’s appeal to the Board on October 30, 2013 and as it involves the same issue pending before the Board, it is null and void. *See* 20 C.F.R. § 501.2(c)(3).

⁹ *Supra* note 2.

Appellant reviewed numerous e-mails from the past two months many of which were conflicting. A.B. verbally informed her that she was no longer covered by workers' compensation and had to work full time, and that if she had questions she should ask OWCP. She refused to assist appellant or explain why she could not resume her previous position after being away on family leave. Appellant asserted that the cause of her injury was not a matter regarding whether she could obtain leave. She related, "The cause of the injury specifically was that both [A.B.] and [D.V.] verbalized in conversations that day that I would have to work 40 [hours] a week and that I was no longer able to receive OWCP benefits." Appellant maintained that this violated "the policy where it states that an employee will be returned to their previous position." She contended that A.B. and D.V. were trying to remove her from employment and noted that it was not in their purview to determine whether she was covered by OWCP. Appellant noted that management disputed her initial injury claim and requested referral examinations, which established that they wanted to return her to work full time.¹⁰

Appellant submitted evidence from A.B. challenging her physical restrictions from file number xxxxxx838 and requesting referral examinations. She also submitted a medical report from a referral physician in file number xxxxxx838 and information about employing establishment policies for requesting leave under the FMLA. Appellant noted that on November 13, 2012 she was not requesting leave under FMLA, but was at work when she was told that she had to work full time. She submitted policies of the employing establishment regarding injured employees.

In another statement received March 14, 2015, appellant advised that on November 13, 2012 she requested clarifications of e-mails, but A.B. and D.V. told her to "reread the policy." She related, "This day in time was a culmination of years of these people thinking that I was faking [and] that I was capable of doing much more that I would have to work full time or not work at all." Appellant questioned why she was not informed in 2009 that she had to ask for LWOP every 30 days. She believed that it was an attempt to remove her from employment.

In a letter dated March 4, 2013,¹¹ M.B., a manager, advised appellant that the employing establishment had approved her request for FMLA from January 7 to April 1, 2013.

Appellant submitted the second page of a notice of recurrence (Form CA-2a) submitted under file number xxxxxx838. D.V. noted on the form that on November 13, 2012 she called a crisis hotline about leave requests, an administrative issue. Appellant also resubmitted e-mails between herself and supervisor on November 13, 2012 and a letter from the employing establishment dated January 17, 2013 informing her that to request LWOP she needed to provide a return to work date. It noted that she was full time and thus had to account for 80 hours a pay period.

In a May 29, 2015 decision, OWCP denied modification of its April 22, 2014 decision.

¹⁰ Appellant additionally contended that A.B. did not inform her after she stopped work on November 13, 2012 that there was a limited-duty position available.

¹¹ The letter is dated March 4, 2012 rather than March 4, 2013, but it is apparent from the content that this is a typographical error.

In an October 24, 2015 statement, appellant asserted that she sustained a substantial injury on November 13, 2012. She maintained that D.V., A.B., and M.B. should be “held accountable for performing their duties as outlined in policy.” Appellant noted that on that date A.B. and M.B. asked a coworker to help her enter eight hours of annual or sick leave and contended that if it was an administrative duty rather than one of her duties a supervisor should have entered her time.

On April 3, 2016 appellant again requested reconsideration. She maintained that on November 13, 2012 A.B. trying to return her to her usual full-time employment and failed to inform her of her “rights and responsibilities especially about the rules surrounding personal leave.” Appellant related that the advice she received in e-mails was erroneous. She asserted that she experienced a crisis not because of leave usage but due to her “inability to understand their direction as it related to an inappropriate and unlawful use of authority. This is evidence in many comments included in the e-mails, and which were verbally relayed that day.” Appellant asked for clarification and assistance, but received no response. She also resubmitted evidence regarding her claim under file number xxxxxx838.

In a decision dated August 31, 2016, OWCP denied modification of its May 29, 2015 decision. It found that appellant had not established error or abuse by management and noted that dislike of an action by a supervisor was not compensable.

On appeal appellant contends that she was constructively removed from duty on November 13, 2012 and told that she was no longer covered by workers’ compensation. The employing establishment also confiscated her laptop.

LEGAL PRECEDENT

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers’ compensation. Where the disability results from an employee’s emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.¹² On the other hand, the disability is not covered where it results from such factors as an employee’s fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.¹³

Administrative and personnel matters, although generally related to the employee’s employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹⁴ However, the Board has held that where the evidence establishes error or abuse on the part of the employing

¹² 5 U.S.C. § 8101 *et seq.*; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

¹³ *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹⁴ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff’d on recon.*, 42 ECAB 556 (1991).

establishment in what would otherwise be an administrative matter, coverage will be afforded.¹⁵ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹⁶

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.¹⁷ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.¹⁸

ANALYSIS

As found by the Board on prior appeal, appellant did not attribute her emotional condition to the performance of her regular or specially assigned duties under *Cutler*.¹⁹ Instead, she alleged that management committed error on November 13, 2012 by telling her that she was no longer covered under workers' compensation, that she could not take LWOP, and that she had to work full time. Appellant also maintained that she had not received the proper assistance with leave matters and that management wanted to remove her from employment.

In *Thomas D. McEuen*,²⁰ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employing establishment and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the facts surrounding the administrative or personnel action established error or abuse by employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.²¹

¹⁵ See *William H. Fortner*, 49 ECAB 324 (1998).

¹⁶ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁷ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁸ *Id.*

¹⁹ See *supra* note 11.

²⁰ See *Thomas D. McEuen*, *supra* note 13.

²¹ See *Richard J. Dube*, 42 ECAB 916 (1991).

On reconsideration, appellant attributed her emotional stress on November 13, 2012 to A.B. and D.V. verbally informing her that she had to work full time and could no longer receive benefits from OWCP from a previously accepted claim under a different file number. She did not, however, submit any evidence supporting her allegation. In a November 4, 2012 e-mail, A.B. told appellant that she had to file Forms CA-7 to obtain compensation from OWCP. On November 13, 2012 D.V. noted that appellant asked her why she had to request LWOP to obtain compensation for OWCP, and she told her to read the information on time and attendance. D.V. subsequently telephoned her and reviewed the process for obtaining LWOP and told her to use sick or annual leave until the matter was resolved. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.²² Appellant has not submitted any evidence corroborating her allegation that management told her to work full time or that she could no longer receive benefits from OWCP and thus has not factually established her contentions.

Appellant additionally asserted that A.B. and D.V. wanted to remove her from employment. In support of her allegation, she submitted evidence showing that A.B. challenged her physical restrictions under another file number and requested referral examinations. As discussed, however, administrative or personnel matters are not compensable absent a showing of error or abuse. Appellant has not shown any credible evidence of error or abuse by the employing establishment in handling administrative matters related to her claims. Mere disagreement or dislike of a supervisory or managerial action is not compensable absent evidence of error or abuse.²³ Additionally, job insecurity is not a compensable factor of employment under FECA.²⁴

Appellant further maintained that D.V. and A.B. did not properly assist her inputting leave on November 13, 2012. Matters involving leave usage are an administrative function of the employer and, absent error or abuse, are not compensable.²⁵ Appellant has not shown that management erred by failing to provide her with clear instructions regarding leave usage. Additionally, an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is thus not compensable under FECA.²⁶

On appeal appellant argues that the employing establishment effectively removed her from employment on November 13, 2012, confiscated her laptop, and notified her that she was no longer covered by workers' compensation. She has the burden of proof, however, to submit

²² See *C.H.*, Docket No. 12-1927 (issued March 29, 2013); *B.H.*, Docket No. 12-1851 (issued February 20, 2013).

²³ See *G.C.*, Docket No. 15-1231 (issued February 2, 2016); *A.K.*, Docket No. 14-0437 (issued June 9, 2014).

²⁴ See *M.H.*, Docket No. 15-0478 (issued July 1, 2016).

²⁵ See *Lori A. Facey*, 55 ECAB 217 (2004); *Judy L. Kahn*, 53 ECAB 321 (2002).

²⁶ See *Michael Thomas Plante*, 44 ECAB 510 (1993).

evidence factually establishing her allegations with reliable and probative evidence.²⁷ This appellant has not done. Thus, she has failed to meet her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an emotional condition on November 13, 2012 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the August 31, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 13, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²⁷ See *Pamela D. Casey*, 57 ECAB 260 (2005).